

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

SHAWN JUSTIN CARR,

Petitioner,

v.

WARDEN GAY,

Respondent.

Case No. C07-5250FDB

ORDER ADOPTING
REPORT AND
RECOMMENDATION

The Magistrate Judge analyzed the application of the one-year statute of limitations applicable in this habeas corpus petition, and concludes that this petition is time barred. Petitioner argued for equitable tolling, but the Magistrate Judge noted that Petitioner's own affidavit showed that the basis for his argument – his prison transfer and the resulting difficulties he had accessing the law library as well as his legal material being in storage – occurred in 2005, which was prior to the filing of his Personal Restraint Petition. In his objections, Petitioner reasserts his argument that he is entitled to equitable tolling under the circumstances. Plaintiff's objections fail to rebut the Magistrate Judge, and the Report and Recommendation will be adopted.

The Court having reviewed the Report and Recommendation of the Hon. J. Kelley Arnold United States Magistrate Judge, objections to the Report and Recommendation, and the remaining

record, does hereby find and Order:

- (1) The Court adopts the Report and Recommendation;
- (2) The petition is **DISMISSED WITH PREJUDICE** for the reasons set forth in the Report and Recommendation. This petition is time barred.
- (3) The clerk is directed to send copies of this Order to Petitioner, counsel for Respondent, and to the Hon. J. Kelley Arnold.

DATED this 17th day of December 2007.



FRANKLIN D. BURGESS
UNITED STATES DISTRICT JUDGE